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24 UNITED STATES DISTRICT COURT
25 FOR THE DISTRICT OF ARIZONA

26 UNITED STATES OF AMERICA,)	
27)	
28 Plaintiff,)	CIVIL ACTION NO.
29)	
30 v.)	
31)	
32 SALT RIVER PROJECT AGRICULTURAL)	CONSENT DECREE
33 IMPROVEMENT AND POWER DISTRICT)	
34)	
35 Defendant.)	
36)	

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1 WHEREAS, Plaintiff, the United States of America ("the
2 United States"), on behalf of the United States Environmental
3 Protection Agency ("EPA") is concurrently filing a complaint for
4 injunctive relief and civil penalties pursuant to Sections
5 113(b)(2) and 167 of the Clean Air Act (the "Act"), 42 U.S.C.
6 §§ 7413(b)(2) and 7477, alleging that Defendant, Salt River
7 Project Agricultural Improvement and Power District ("SRP") has
8 undertaken construction projects at a major emitting facility in
9 violation of the Prevention of Significant Deterioration ("PSD")
10 provisions of Part C of Subchapter I of the Act, 42 U.S.C.
11 §§ 7470-7492, and in violation of the federally approved and
12 enforceable Arizona State Implementation Plan ("SIP");

13 WHEREAS, in its complaint, the United States alleges, *inter*
14 *alia*, that SRP failed to obtain the necessary permits and install
15 the controls necessary under the Act to reduce sulfur dioxide
16 ("SO₂"), oxides of nitrogen ("NO_x"), and particulate matter
17 ("PM"), and that SRP failed to obtain an operating permit under
18 Title V of the Act that reflects applicable requirements imposed
19 under Part C of Subchapter I of the Act for its Coronado
20 Generating Station ("CGS") located near St. Johns, Arizona;

21 WHEREAS, the complaint alleges claims upon which relief can
22 be granted against SRP under Sections 113 and 167 of the Act, 42
23 U.S.C. §§ 7413 and 7477;

24 WHEREAS, the United States provided SRP and the State of
25 Arizona actual notice of alleged violations in accordance with
26 Section 113(a)(1) and (b) of the Act, 42 U.S.C. § 7413(a)(1) and
27 (b);

28 WHEREAS, the United States and SRP (collectively, the

1 "Parties") have agreed that settlement of this action is in the
2 best interest of the Parties and in the public interest, and that
3 entry of this Consent Decree without further litigation is the
4 most appropriate means of resolving this matter;

5 WHEREAS, the Parties recognize, and the Court by entering
6 this Consent Decree finds, that this Consent Decree has been
7 negotiated in good faith and at arm's length and that this
8 Consent Decree is fair, reasonable, consistent with the goals of
9 the Act, and in the public interest;

10 WHEREAS, SRP has cooperated in the resolution of this
11 matter;

12 WHEREAS, SRP denies the violations alleged in the complaint,
13 and nothing herein shall constitute an admission of liability;

14 WHEREAS, SRP maintains that its agreement in this Consent
15 Decree to install, correlate, maintain, and operate PM CEMS shall
16 not prevent SRP in any future proceedings from challenging the
17 relationship between the data generated from such PM CEMS,
18 including the averaging period for which such data is reported
19 pursuant to Paragraph 71, and the results of performance tests
20 for PM (e.g., Method 5, 5B, 5I, or 17); and

21 WHEREAS, the Parties have consented to entry of this Consent
22 Decree without trial of any issues;

23 NOW, THEREFORE, without any admission of fact or law, it is
24 hereby ORDERED, ADJUDGED, AND DECREED as follows:

25 I. JURISDICTION AND VENUE

26 1. This Court has jurisdiction over this action, the
27 subject matter herein, and the Parties consenting hereto,
28 pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and pursuant

1 to Sections 113 and 167 of the Act, 42 U.S.C. §§ 7413 and 7477.
2 Venue is proper under Section 113(b) of the Act, 42 U.S.C.
3 § 7413(b), and under 28 U.S.C. § 1391(b) and (c). Solely for the
4 purposes of this Consent Decree and the underlying complaint, and
5 for no other purpose, SRP waives all objections and defenses that
6 it may have to the Court's jurisdiction over this action, to the
7 Court's jurisdiction over SRP, and to venue in this district.
8 SRP consents to and shall not challenge entry of this Consent
9 Decree or this Court's jurisdiction to enter and enforce this
10 Consent Decree. Except as expressly provided for herein, this
11 Consent Decree shall not create any rights in or obligations of
12 any party other than the Parties to this Consent Decree. Except
13 as provided in Section XXV (Public Comment) of this Consent
14 Decree, the Parties consent to entry of this Consent Decree
15 without further notice.

16 II. APPLICABILITY

17 2. Upon entry, the provisions of this Consent Decree shall
18 apply to and be binding upon the Parties, their successors and
19 assigns, and upon SRP's directors, officers, employees, servants
20 and agents solely in their capacities as such.

21 3. SRP shall provide a copy of this Consent Decree to all
22 vendors, suppliers, consultants, contractors, agents, and any
23 other company or other organization retained to perform any of
24 the work required by this Consent Decree. Notwithstanding any
25 retention of contractors, subcontractors, or agents to perform
26 any work required under this Consent Decree, SRP shall be
27 responsible for ensuring that all work is performed in accordance
28 with the requirements of this Consent Decree. In any action to

1 enforce this Consent Decree, SRP shall not assert as a defense
2 the failure of its officers, directors, employees, servants,
3 agents, or contractors to take actions necessary to comply with
4 this Consent Decree, unless it is determined to be a Force
5 Majeure Event as governed by Section XIV of this Consent Decree.

6 **III. DEFINITIONS**

7 4. Every term expressly defined by this Section shall have
8 the meaning given that term herein. Every other term used in
9 this Consent Decree that is also a term used under the Act or in
10 a federal regulation implementing the Act shall mean in this
11 Consent Decree what such term means under the Act or those
12 regulations.

13 5. A "30-Day Rolling Average NO_x Emission Rate" for a Unit
14 shall be expressed in lb/mmBtu and calculated in accordance with
15 the following procedure: first, sum the total pounds of NO_x
16 emitted from the Unit during the current Unit Operating Day and
17 the previous twenty-nine (29) Unit Operating Days; second, sum
18 the total heat input to the Unit in mmBtu during the current Unit
19 Operating Day and the previous twenty-nine (29) Unit Operating
20 Days; and third, divide the total number of pounds of NO_x emitted
21 during the thirty (30) Unit Operating Days by the total heat
22 input during the thirty (30) Unit Operating Days. A new 30-Day
23 Rolling Average NO_x Emission Rate shall be calculated for each
24 new Unit Operating Day. Each 30-Day Rolling Average NO_x Emission
25 Rate shall include all emissions that occur during all periods
26 within any Unit Operating Day, including emissions from startup,
27 shutdown, and malfunction.

28 6. A "365-Day Plant-Wide Rolling NO_x Tonnage Limitation"

1 means the limitation, as specified in this Consent Decree, on the
2 total number of tons of NO_x emitted from CGS Units 1 and 2 during
3 a 365-day period beginning on June 1, 2014, and continuing each
4 day thereafter, and shall include all emissions during startup,
5 shutdown, and malfunction, unless the malfunction is determined
6 to be a Force Majeure Event as defined in Section XIV.

7 7. A "30-Day Rolling Average SO₂ Removal Efficiency" means
8 the percent reduction in the mass of SO₂ achieved by a Unit's FGD
9 system over a 30 Unit Operating Day period and shall be
10 calculated as follows: step one, sum the total pounds of SO₂
11 emitted as measured at the outlet of the FGD system for the Unit
12 during the current Unit Operating Day and the previous
13 twenty-nine (29) Unit Operating Days as measured at the outlet of
14 the FGD system for that Unit; step two, sum the total pounds of
15 SO₂ delivered to the inlet of the FGD system for the Unit during
16 the current Unit Operating Day and the previous twenty-nine (29)
17 Unit Operating Days as measured at the inlet to the FGD system
18 for that Unit (this shall be calculated by measuring the ratio of
19 the lb/mmBtu SO₂ inlet to the lb/mmBtu SO₂ outlet and multiplying
20 the outlet pounds of SO₂ by that ratio); step three, subtract the
21 outlet SO₂ emissions calculated in step one from the inlet SO₂
22 emissions calculated in step two; step four, divide the remainder
23 calculated in step three by the inlet SO₂ emissions calculated in
24 step two; and step five, multiply the quotient calculated in step
25 four by 100 to express as a percentage of removal efficiency. A
26 new 30-day Rolling Average SO₂ Removal Efficiency shall be
27 calculated for each new Unit Operating Day, and shall include all
28 emissions that occur during all periods within each Unit

1 Operating Day, including emissions from startup, shutdown, and
2 malfunction.

3 8. A "30-Day Rolling Average SO₂ Emission Rate" for a Unit
4 shall be expressed in lb/mmBtu and calculated in accordance with
5 the following procedure: first, sum the total pounds of SO₂
6 emitted from the Unit during the current Unit Operating Day and
7 the previous twenty-nine (29) Unit Operating Days; second, sum
8 the total heat input to the Unit in mmBtu during the current Unit
9 Operating Day and the previous twenty-nine (29) Unit Operating
10 Days; and third, divide the total number of pounds of SO₂ emitted
11 during the thirty (30) Unit Operating Days by the total heat
12 input during the thirty (30) Unit Operating Days. A new 30-Day
13 Rolling Average SO₂ Emission Rate shall be calculated for each
14 new Unit Operating Day. Each 30-Day Rolling Average SO₂ Emission
15 Rate shall include all emissions that occur during all periods
16 within any Unit Operating Day, including emissions from startup,
17 shutdown, and malfunction.

18 9. "Affirmative Defense," as used in this Consent Decree,
19 means the Affirmative Defense approved by EPA into the Arizona
20 SIP Rule 18-2-310, "Affirmative Defenses for Excess Emissions Due
21 to Malfunction, Startup, and Shutdown," which provides an owner
22 or operator of a source an Affirmative Defense in a civil or
23 administrative action, other than a judicial action for
24 injunctive relief, if the owner or operator of the source has
25 emissions in excess of an applicable emission limitation due to
26 malfunction, startup, or shutdown, has complied with the
27 reporting requirements of Rule 18-2-310.01, and satisfies
28 additional requirements of Rule 18-2-310.

1 10. "Arizona DEQ" means the Arizona Department of
2 Environmental Quality.

3 11. "Arizona SIP" means the Arizona State Implementation
4 Plan, and any amendments thereto, as approved by EPA pursuant to
5 Section 110 of the Act, 42 U.S.C. § 7410.

6 12. "CEMS" or "Continuous Emission Monitoring System,"
7 means, for obligations involving the monitoring of NO_x and SO₂
8 emissions under this Consent Decree, the devices defined in 40
9 C.F.R. § 72.2, the inlet SO₂ lb/MMbtu monitors, and the computer
10 system for recording, calculating, and storing data and equations
11 required by this Consent Decree.

12 13. "CGS" means SRP's Coronado Generating Station
13 consisting of two Riley turbo-fired boilers (designated as Unit 1
14 and Unit 2) and related equipment, which is located near St.
15 Johns, Arizona.

16 14. "Clean Air Act" or "Act" means the federal Clean Air
17 Act, 42 U.S.C. §§ 7401-7671q, and its implementing regulations.

18 15. "Consent Decree" means this Consent Decree and the
19 Appendix hereto, which is incorporated into the Consent Decree.

20 16. "Day" means calendar day unless otherwise specified in
21 this Consent Decree.

22 17. "Electrostatic Precipitator" or "ESP" means a device
23 for removing particulate matter from combustion gases by
24 imparting an electric charge to the particles and then attracting
25 them to a metal plate or screen of opposite charge before the
26 combustion gases are exhausted to the atmosphere.

27 18. "Emission Rate" for a given pollutant means the number
28 of pounds of that pollutant emitted per million British thermal

units of heat input (lb/mmBtu), measured in accordance with this Consent Decree.

19. "EPA" means the United States Environmental Protection Agency.

20. "Flue Gas Desulfurization System" or "FGD" means a pollution control device that employs flue gas desulfurization technology, including an absorber utilizing lime, fly ash, or limestone slurry, for the reduction of sulfur dioxide emissions.

21. "Fossil Fuel" means any hydrocarbon fuel, including coal, petroleum coke, petroleum oil, or natural gas.

22. "lb/mmBtu" means one pound of a pollutant per million British thermal units of heat input.

23. "Low NO_x Combustion System" means burners, and associated combustion air control equipment, including overfire air, for combusting pulverized coal which control mixing characteristics of the pulverized coal and oxygen, lower the combustion rate, lower oxygen concentration and heat temperature during the initial phase of combustion, and thereby restrain the formation of NO_x created by both the nitrogen content of the pulverized coal and by heat.

24. "Netting" shall mean the process of determining whether a particular physical change or change in the method of operation of a major stationary source results in a net emissions increase, as that term is defined at 40 C.F.R. § 52.21(b)(3)(i) and at Section R9-3-101 of the Arizona SIP.

25. "NO_x" means oxides of nitrogen, measured in accordance with the provisions of this Consent Decree.

26. "Ownership Interest" means part or all of SRP's legal

1 or equitable ownership interest in CGS.

2 27. "Parties" means the United States of America on behalf
3 of EPA and SRP. "Party" means one of the named "Parties."

4 28. "PM" means total filterable particulate matter,
5 measured in accordance with the provisions of this Consent
6 Decree.

7 29. "PM CEMS" or "PM Continuous Emission Monitoring System"
8 means, for obligations involving the monitoring of PM emissions
9 under this Consent Decree, the equipment that samples, analyzes,
10 measures, and provides, by readings taken at frequent intervals,
11 an electronic and/or paper record of PM emissions.

12 30. "Prevention of Significant Deterioration" or "PSD"
13 means the prevention of significant deterioration of air quality
14 program under Part C of Subchapter I of the Clean Air Act, 42
15 U.S.C. §§ 7470 - 7492, and 40 C.F.R. § 52.21. It also includes
16 the prevention of significant deterioration of air quality
17 program as approved into the Arizona SIP, Arizona Administrative
18 Code R9-3-101, R9-3-301, R9-3-304, and R9-3-305.

19 31. "Project Dollars" means SRP's expenditures and payments
20 incurred or made in carrying out the Environmental Projects
21 identified in Section VIII (Environmental Projects) of this
22 Consent Decree to the extent that such expenditures or payments
23 both: (a) comply with the requirements set forth in Section VIII
24 and Appendix A of this Consent Decree, and (b) constitute SRP's
25 direct payments for such projects, or SRP's external costs for
26 contractors, vendors, and equipment.

27 32. "Removal Efficiency" for a given pollutant means the
28 percentage of that pollutant removed by the applicable emission

1 control device, measured in accordance with the provisions of
2 this Consent Decree.

3 33. "SCR" means a pollution control device for reducing NO_x
4 emissions through the use of selective catalytic reduction
5 technology.

6 34. "SO₂" means sulfur dioxide, measured in accordance with
7 the provisions of this Consent Decree.

8 35. "SO₂ Allowance" means "allowance" of SO₂ as defined at
9 42 U.S.C. § 7651a(3): "an authorization, allocated to an
10 affected Unit by the Administrator of EPA under Subchapter IV of
11 the Act, to emit, during or after a specified calendar year, one
12 ton of sulfur dioxide."

13 36. "State" means the State of Arizona.

14 37. "Super-Compliant SO₂ Allowance" means an SO₂ Allowance
15 attributable to reductions beyond the requirements of this
16 Consent Decree.

17 38. "Title V Permit" means the permit required of SRP's CGS
18 under Subchapter V of the Act, 42 U.S.C. §§ 7661-7661e.

19 39. "Unit" means CGS Unit 1 or Unit 2.

20 40. "Unit Operating Day" means, for Unit 1, any calendar
21 day on which Unit 1 fires fossil fuel, and, for Unit 2, any
22 calendar day on which Unit 2 fires fossil fuel.

23 IV. NO_x EMISSION REDUCTIONS AND CONTROLS

24 A. NO_x Emission Controls

25 1. Low-NO_x Combustion System Installation and Performance 26 Requirements

27 41. SRP shall install a Low NO_x Combustion System on one
28 Unit no later than June 1, 2009 and on the other Unit by no later

1 than June 1, 2011. Commencing on the earlier of 90 Unit Operating
2 Days or 180 calendar days after the Low NO_x Combustion System
3 installation date and continuing thereafter, each Unit shall
4 achieve and maintain a 30-Day Rolling Average NO_x Emission Rate
5 of no greater than 0.320 lb/mmBtu.

6 **2. SCR Installation and Performance Requirements**

7 42. SRP shall install an SCR on one Unit no later than June
8 1, 2014. Beginning on June 1, 2014, and continuing thereafter,
9 SRP shall commence continuous operation of the SCR installed on
10 that Unit so as to achieve and maintain a 30-Day Rolling Average
11 NO_x Emission Rate of no greater than 0.080 lb/mmBtu.

12 **3. Continuous Operation of NO_x Controls**

13 43. SRP shall continuously operate each NO_x control covered
14 under this Consent Decree at all times that the Unit it serves is
15 in operation, consistent with the technological limitations,
16 manufacturers' specifications, and good engineering and
17 maintenance practices for minimizing emissions to the extent
18 practicable.

19 **4. 365-Day Plant-Wide Rolling NO_x Tonnage Limitation**

20 44. Beginning on June 1, 2014, and continuing thereafter,
21 SRP shall not exceed a 365-Day Plant-Wide Rolling NO_x Tonnage
22 Limitation at CGS Units 1 and 2 of 7,300 tons.

23 **5. Monitoring of NO_x Emissions**

24 **A. 30-Day Rolling Average NO_x Emission Rate**

25 45. In determining the 30-Day Rolling Average NO_x Emission
26 Rate, SRP shall use CEMS in accordance with the procedures of 40
27 C.F.R. Part 75, except that: (1) NO_x emissions data need not be
28 bias adjusted, (2) for any CEMS with a span less than 100 parts

1 per million ("ppm"), the calibration drift and out-of-control
2 criteria in Procedure 1, section 4.3 of Part 60, Appendix F shall
3 apply in lieu of the low emitter specifications in Part 75,
4 Appendix B, section 2.1, (3) for any CEMS with a span less than
5 or equal to 30 ppm the exemption from the Part 75 linearity check
6 will not apply and either the Part 75 linearity check or the
7 cylinder gas audit described in Procedure 1, section 5.1.2 of
8 Part 60, Appendix F shall be performed on a quarterly basis, and
9 (4) for the Unit controlled by SCR, an annual relative accuracy
10 test audit shall meet, at a minimum, a relative accuracy of less
11 than 20% or an accuracy of less than 0.016 lb/mmBtu (expressed as
12 the difference between the monitor mean and the reference value
13 mean).

14 **B. 365-Day Plant-Wide Rolling NO_x Tonnage Limitation**

15 46. For purposes of calculating the 365-day Plant-Wide
16 Rolling NO_x Tonnage Limitation, SRP shall use CEMS in accordance
17 with the procedures specified in 40 C.F.R. Part 75.

18 **V. SO₂ EMISSION REDUCTIONS AND CONTROLS**

19 **A. Best Management Practices for Existing SO₂ Controls**

20 47. Beginning thirty (30) days from entry of this Consent
21 Decree, SRP shall continuously operate and maintain, to the
22 maximum extent practicable, its existing FGDs on CGS Unit 1 and
23 Unit 2 in a manner consistent with good engineering and
24 maintenance practices for minimizing SO₂ emissions.

25 **B. SO₂ Emission Controls**

26 **1. New FGD Installations at First Unit**

27 48. SRP shall install a new FGD on one Unit no later than
28 January 1, 2012. Beginning on January 1, 2012, and continuing

1 thereafter, SRP shall commence continuous operation of the FGD so
2 as to achieve and maintain a 30-Day Rolling Average SO₂ Removal
3 Efficiency at this Unit of at least 95.0% or a 30-Day Rolling
4 Average SO₂ Emissions Rate of no greater than 0.080 lb/mmBtu.

5 **2. New FGD Installation at Second Unit**

6 49. SRP shall install a new FGD on the Unit not selected
7 pursuant to Paragraph 48 no later than January 1, 2013.

8 Beginning on January 1, 2013, and continuing thereafter, SRP
9 shall commence continuous operation of the FGD so as to achieve
10 and maintain a 30-Day Rolling Average SO₂ Removal Efficiency at
11 this second Unit of at least 95.0% or a 30-Day Rolling Average
12 SO₂ Emissions Rate of no greater than 0.080 lb/mmBtu.

13 **3. Continuous Operation of SO₂ Controls**

14 50. SRP shall continuously operate each FGD covered under
15 this Consent Decree at all times that the Unit it serves is in
16 operation, consistent with the technological limitations,
17 manufacturers' specifications, and good engineering and
18 maintenance practices for the FGDs for minimizing emissions to
19 the extent practicable.

20 **C. Surrender of SO₂ Allowances**

21 51. For purposes of this Subsection, "surrender" means,
22 with regard to SO₂ Allowances, permanently surrendering so that
23 such SO₂ Allowances can never be used to meet any compliance
24 requirement under the Clean Air Act or the Arizona SIP.

25 52. Except as provided in Paragraph 59, SRP shall not sell,
26 trade, or transfer any SO₂ Allowances allocated to CGS that would
27 otherwise be available for sale, trade, or transfer as a result
28 of the actions taken by SRP to comply with the requirements of

1 this Consent Decree.

2 53. Beginning with calendar year 2012, SRP Coronado shall
3 surrender to EPA, or transfer to a non-profit third party
4 selected by SRP for purposes of surrender, all SO₂ Allowances
5 that have been allocated to CGS in excess of the amount needed to
6 meet its own federal and/or State Clean Air Act regulatory
7 requirements at CGS and Springerville Unit 4, which is located at
8 the Springerville Generating Station.

9 54. If SRP commences operation of one or more new coal-
10 fired units that it owns in whole or in part, as further
11 described in this Paragraph, in the Western Electricity
12 Coordinating Council Region no earlier than five (5) years and no
13 later than fourteen (14) years from the date this Consent Decree
14 is entered by this Court, then SRP may also use SO₂ Allowances,
15 as limited by this Paragraph, allocated to CGS to meet the
16 federal and/or state Clean Air Act regulatory requirements for
17 certain SO₂ emissions from such new coal-fired unit(s). SRP may
18 only use such SO₂ Allowances pursuant to this Paragraph if such
19 new coal-fired unit(s) is equipped with the Best Available Control
20 Technology (if the new coal-fired unit(s) will be emitting any of
21 the pollutants set forth at 40 C.F.R. § 52.21(b)(50) and the new
22 coal-fired unit(s) will be located in an attainment area for
23 those pollutants) and/or the Lowest Achievable Emission Rate (if
24 the new coal-fired unit(s) will be emitting any of the pollutants
25 set forth at 40 C.F.R. § 51.165(a)(xxxvii) and the new coal-fired
26 unit(s) will be located in a nonattainment area for those
27 pollutants). SRP may only use SO₂ Allowances for the SO₂
28 emissions associated with a total of 400 MW that it owns at such

1 new coal-fired unit(s), whether at one new coal-fired unit (e.g.,
2 SRP owns a total of at least 400 MW at one new coal-fired unit)
3 or in the aggregate at multiple new coal-fired units (e.g., SRP
4 owns 100 MW at four new coal-fired units for an aggregate total
5 of 400 MW). To determine the number of SO₂ Allowances SRP may
6 use pursuant to this Paragraph, SRP may use no more than that
7 number of SO₂ Allowances that cover the same percentage of total
8 SO₂ emissions from such new coal-fired unit(s) as the percentage
9 of SRP's ownership in such new coal-fired unit(s), on a MW basis.
10 Thus, for example, if SRP owns 400 MW of a new 800 MW coal-fired
11 unit that otherwise meets the requirements of this Paragraph, SRP
12 may use excess SO₂ Allowances allocated to CGS to cover no more
13 than fifty (50) percent of the total SO₂ emissions from such new
14 coal-fired unit. This reduction in the amount of SO₂ Allowances
15 surrendered by or on behalf of SRP would start with the year this
16 new Unit(s) commences operation.

17 55. SRP shall make its surrender of SO₂ Allowances
18 annually, within forty-five (45) days of its receipt from EPA of
19 the Annual Deduction Reports for SO₂. Any surrender need not
20 include the specific SO₂ Allowances that were allocated to CGS,
21 so long as SRP surrenders SO₂ Allowances that are from the same
22 year and that are equal to the number required to be surrendered
23 under this Subsection.

24 56. If any SO₂ Allowances are transferred directly to a
25 non-profit third party for surrender to EPA, SRP shall include a
26 description of such transfer in the next report submitted to EPA
27 pursuant to Section XI (Periodic Reporting) of this Consent
28 Decree. Such report shall: (i) provide the identity of the

1 non-profit third-party recipient(s) of the SO₂ Allowances and a
2 listing of the serial numbers of the transferred SO₂ Allowances;
3 and (ii) include a certification by the non-profit third-party
4 recipient(s) stating that the recipient(s) will not sell, trade,
5 or otherwise exchange any of the SO₂ Allowances and will not use
6 any of the SO₂ Allowances to meet any obligation imposed by any
7 environmental law. No later than the third periodic report due
8 after the transfer of any SO₂ Allowances, SRP shall include a
9 statement that the non-profit third-party recipient(s)
10 surrendered the SO₂ Allowances for permanent surrender to EPA in
11 accordance with the provisions of Paragraph 57 within one (1)
12 year after SRP transferred the SO₂ Allowances to them. SRP shall
13 not have complied with the SO₂ Allowance surrender requirements
14 of this Subsection until all non-profit third-party recipient(s)
15 shall have actually surrendered the transferred SO₂ Allowances to
16 EPA.

17 57. For all SO₂ Allowances surrendered to EPA, SRP or the
18 non-profit third-party recipient(s) (as the case may be) shall
19 first submit an SO₂ Allowance transfer request form to EPA's
20 Office of Air and Radiation's Clean Air Markets Division
21 directing the transfer of such SO₂ Allowances to the EPA
22 Enforcement Surrender Account or to any other EPA account that
23 EPA may direct in writing. As part of submitting these transfer
24 requests, SRP or the non-profit third-party recipient(s) shall
25 irrevocably authorize the transfer of these SO₂ Allowances and
26 identify - by name of account and any applicable serial or other
27 identification numbers or station names - the source and location
28 of the SO₂ Allowances being surrendered.

1 D. Monitoring of SO₂ Emissions

2 58. In determining the 30-Day Rolling Average SO₂ Emission
3 Rate and the 30-Day Rolling Average SO₂ Removal Efficiency, SRP
4 shall use CEMS in accordance with the procedures of 40 C.F.R.
5 Part 75, except that: (1) SO₂ emissions data need not be bias
6 adjusted; (2) inlet pounds of SO₂ will be calculated as described
7 in Paragraph 7 in lieu of installing an inlet flow monitor, (3)
8 on any CEMS with a span less than 100 ppm, the calibration drift
9 and out-of-control criteria in Procedure 1, section 4.3 of Part
10 60, Appendix F shall apply in lieu of the low emitter
11 specifications in Part 75, Appendix B, section 2.1, (4) on any
12 CEMS with a span less than or equal to 30 ppm the exemption from
13 the Part 75 linearity check will not apply and either the Part 75
14 linearity check or the cylinder gas audit described in Procedure
15 1, section 5.1.2 of Part 60, Appendix F shall be performed on a
16 quarterly basis, and (5) an annual relative accuracy test audit
17 shall meet, at a minimum, a relative accuracy of less than 20% or
18 an accuracy of less than 0.016 lb/mmBtu (expressed as the
19 difference between the monitor mean and the reference value
20 mean).

21 E. General SO₂ Provisions

22 59. Provided that SRP is in compliance with all SO₂
23 emission limitations established in this Consent Decree, nothing
24 in this Consent Decree shall preclude SRP from using, selling, or
25 transferring Super-Compliant SO₂ Allowances that may arise as a
26 result of achieving and maintaining SO₂ emission rates or removal
27 efficiencies at Unit 1 and Unit 2 below the emission limits
28 required in this Consent Decree, so long as SRP timely reports

1 the generation of such Super-Compliant SO₂ Allowances in
2 accordance with Section XI (Periodic Reporting) of this Consent
3 Decree.

4 60. SRP shall not use SO₂ Allowances to comply with any
5 requirement of this Consent Decree, including by claiming
6 compliance with any emission limitation required by this Consent
7 Decree by using, tendering, or otherwise applying SO₂ Allowances
8 to offset any excess emissions (i.e., emissions above the limits
9 specified in Paragraphs 48 and 49).

10 61. Nothing in this Consent Decree shall prevent SRP from
11 purchasing or otherwise obtaining SO₂ Allowances from another
12 source for purposes of complying with state or federal Clean Air
13 Act requirements to the extent otherwise allowed by law.

14 62. The requirements in Paragraphs 52 through 57 of this
15 Consent Decree pertaining to SRP's surrender of SO₂ Allowances
16 are permanent injunctions not subject to any termination
17 provision of this Consent Decree.

18 VI. PM EMISSION REDUCTIONS AND CONTROLS

19 A. Optimization of Existing ESPs

20 63. Beginning thirty (30) days after entry of this Consent
21 Decree, and continuing thereafter, SRP shall operate each ESP on
22 each Unit at CGS at all times when the Unit is in operation to
23 maximize PM emission reductions, provided that such operation of
24 the ESP is consistent with the technological limitations,
25 manufacturer's specifications and good engineering and
26 maintenance practices for the ESP. Except as required during
27 correlation testing under 40 C.F.R. Part 60, Appendix B,
28 Performance Specification 11, and Quality Assurance Requirements

1 under Appendix F, Procedure 2, as required by this Consent
2 Decree, SRP shall, at a minimum, to the extent reasonably
3 practicable: (a) fully energize each section of the ESP for each
4 unit, and repair any failed ESP section at the next planned or
5 unplanned Unit outage of sufficient length; (b) operate automatic
6 control systems on each ESP to maximize PM collection efficiency;
7 (c) maintain power levels delivered to the ESPs, consistent with
8 manufacturers' specifications, the operational design of the
9 Unit, and good engineering practices; (d) inspect for and repair
10 during the next planned or unplanned Unit outage of sufficient
11 length any openings in ESP casings, ductwork and expansion joints
12 to minimize air leakage; and (e) optimize the plate-cleaning and
13 discharge-electrode-cleaning systems for the ESPs at each Unit by
14 varying the cycle time, cycle frequency, rapper-vibrator
15 intensity, and number of strikes per cleaning event.

16 **B. PM Emission Rate and Monitoring Requirements**

17 64. Upon installation and commencement of operation of a
18 FGD system for a Unit as required by Paragraphs 48 and 49, and
19 continuing thereafter, that Unit shall achieve and maintain a PM
20 Emission Rate no greater than 0.030 lb/mmBtu.

21 65. Within one-hundred and eighty (180) days after each
22 date established by this Consent Decree for SRP to achieve and
23 maintain a PM Emission Rate, and continuing annually thereafter,
24 SRP shall conduct a stack test for PM. To determine compliance
25 with the PM Emission Rate established in Paragraph 64, SRP shall
26 use the reference methods and procedures (filterable portion
27 only) specified in 40 C.F.R. Part 60, App. A-3, Method 5, Method
28 5B, or Method 5I, App. A-6, Method 17, or alternative stack tests

1 or methods that are requested by SRP and approved by EPA and
2 Arizona DEQ. Each test shall consist of three separate runs
3 performed under representative operating conditions not including
4 periods of startup, shutdown, or malfunction. The sampling time
5 for each run shall be at least 120 minutes and the volume of each
6 run shall be 1.70 dry standard cubic meters (60 dry standard
7 cubic feet). SRP shall calculate the PM Emission Rate from the
8 stack test results in accordance with 40 C.F.R. § 60.8(f). The
9 results of each PM stack test shall be submitted to EPA and
10 Arizona DEQ within forty-five (45) days of completion of each
11 test.

12 66. When SRP submits the application for amendment to its
13 Title V permit pursuant to Paragraph 134, that application shall
14 include a Compliance Assurance Monitoring ("CAM") plan, under 40
15 C.F.R. Part 64, for the PM Emission Rate in Paragraph 64. The PM
16 CEMS required under Paragraph 67 may be used in that CAM plan.

17 C. PM CEMS

18 67. SRP shall install, correlate, maintain, and operate PM
19 CEMS on Unit 1 and Unit 2 as specified below. The PM CEMS shall
20 comprise a continuous particle mass monitor measuring particulate
21 matter concentration, directly or indirectly, on an hourly
22 average basis and a diluent monitor used to convert the
23 concentration to units expressed in lb/mmBtu. The PM CEMS
24 installed at each Unit must be appropriate for the anticipated
25 stack conditions and capable of measuring PM concentrations on an
26 hourly average basis. SRP shall maintain, in an electronic
27 database, the hourly average emission values of all PM CEMS in
28 lb/mmBtu. Except for periods of monitor malfunction, maintenance,

1 or repair, SRP shall continuously operate the PM CEMS at all
2 times when the Unit it serves is operating.

3 68. No later than January 1, 2010, SRP shall submit to EPA
4 and Arizona DEQ for review and approval pursuant to Section XII
5 (Review and Approval of Submittals) of this Consent Decree a plan
6 for the installation and correlation of the PM CEMS for Unit 1
7 and Unit 2.

8 69. No later than one hundred twenty (120) days prior to
9 the deadline to commence operation of the PM CEMS as set forth in
10 Paragraph 71, SRP shall submit to EPA and Arizona DEQ for review
11 and approval pursuant to Section XII (Review and Approval of
12 Submittals) of this Consent Decree a proposed Quality
13 Assurance/Quality Control ("QA/QC") protocol that shall be
14 followed for such PM CEMS.

15 70. In developing both the plan for installation and
16 correlation of the PM CEMS and the QA/QC protocol, SRP shall use
17 the criteria set forth in 40 C.F.R. Part 60, Appendix B,
18 Performance Specification 11, and Appendix F, Procedure 2.
19 Following EPA's and Arizona DEQ's approval of the plan described
20 in Paragraph 68 and the QA/QC protocol described in Paragraph 69,
21 SRP shall thereafter operate the PM CEMS in accordance with the
22 approved plan and QA/QC protocol.

23 71. Within one hundred eighty (180) calendar days following
24 commencement of operation of each FGD, SRP shall install,
25 correlate, maintain, and operate a PM CEMS on the Unit being
26 controlled by the new FGD, conduct performance specification
27 tests on that PM CEMS, and demonstrate compliance with the PM
28 CEMS installation and correlation plan submitted to and approved

1 by EPA and Arizona DEQ in accordance with Paragraphs 68 and 69.
2 SRP shall report, pursuant to Section XI (Periodic Reporting),
3 the data recorded by the PM CEMS, expressed in lb/mmBtu on a
4 rolling average 3-hour, 6-hour, 24-hour, 30-day, and 365-day
5 basis in electronic format to EPA and Arizona DEQ and identify in
6 the report any PM concentrations measured by the PM CEMS that are
7 greater than 125% of the highest PM concentration level used in
8 the most recent correlation testing performed pursuant to
9 Performance Specification 11.

10 72. SRP shall operate the PM CEMS for at least two (2)
11 years. If, after two (2) years of operation, SRP believes that
12 it is infeasible to continue operation of the PM CEMS, SRP may
13 submit a demonstration of infeasibility to EPA. As part of that
14 demonstration, SRP shall submit an alternative PM monitoring plan
15 for review and approval by EPA. If EPA disapproves the
16 alternative monitoring plan, or if EPA rejects SRP's assertion
17 that it is infeasible to continue operating the PM CEMS; such
18 disagreement is subject to Dispute Resolution as specified in
19 this Consent Decree.

20 73. Operation of a PM CEMS shall be considered "infeasible"
21 if, by way of example, the PM CEMS: (A) cannot be kept in proper
22 condition for sufficient periods of time to produce reliable,
23 adequate, or useful data; or (B) SRP demonstrates that recurring,
24 chronic, or unusual equipment adjustment or servicing needs in
25 relation to other types of continuous emission monitors cannot be
26 resolved through reasonable expenditures of resources; or (C)
27 chronic and difficult operational issues at Unit 1 or Unit 2
28 cannot be resolved through reasonable expenditure of resources;

1 or (D) the data produced by the CEMS cannot be used to assess PM
2 emissions from Unit 1 or Unit 2 or performance of that Unit's
3 control devices. If EPA determines that SRP has demonstrated
4 infeasibility pursuant to this Paragraph, SRP shall be entitled
5 to discontinue operation of and remove the PM CEMS.

6 **D. General PM Provisions**

7 74. Although stack testing shall be used to determine
8 compliance with the PM Emission Rate established by this Consent
9 Decree, data from PM CEMS shall be used, at a minimum, to monitor
10 progress in reducing PM emissions.

11 75. Nothing in this Consent Decree is intended to, or
12 shall, alter or waive any applicable law (including but not
13 limited to any defenses, entitlements, challenges, or
14 clarifications related to the Credible Evidence Rule, 62 Fed.
15 Reg. 8314 (Feb. 24, 1997)) concerning the use of data for any
16 purpose under the Act.

17 **VII. PROHIBITION ON NETTING CREDITS OR OFFSETS**

18 76. Emission reductions at CGS that result from actions to
19 be taken by SRP after entry of this Consent Decree to comply with
20 the requirements of this Consent Decree shall not be considered
21 as a creditable contemporaneous emission decrease for the purpose
22 of obtaining a netting credit or offset under the Clean Air Act's
23 Nonattainment New Source Review and PSD programs.

24 77. The limitations on the generation and use of netting
25 credits and offsets set forth in the previous Paragraph do not
26 apply to emission reductions achieved at CGS that are greater
27 than those required under this Consent Decree. For purposes of
28 this Paragraph, emission reductions at CGS are greater than those

1 required under this Consent Decree if they result from CGS'
2 compliance with federally-enforceable emission limits that are
3 more stringent than those limits imposed on CGS Unit 1 and Unit 2
4 under this Consent Decree and under applicable provisions of the
5 Clean Air Act or the Arizona SIP.

6 78. Nothing in this Consent Decree is intended to preclude
7 the emission reductions generated under this Consent Decree from
8 being considered by the State or EPA as creditable
9 contemporaneous emission decreases for the purpose of attainment
10 demonstrations submitted pursuant to § 110 of the Act, 42 U.S.C.
11 § 7410, or in determining impacts on National Ambient Air Quality
12 Standards, PSD increment, or air quality related values,
13 including visibility, in a Class I area.

14 VIII. ENVIRONMENTAL PROJECTS

15 79. SRP shall implement the Environmental Projects
16 ("Projects") described in Appendix A to this Consent Decree in
17 compliance with the approved plans and schedules for such
18 Projects and other terms of this Consent Decree. In implementing
19 the Projects, SRP shall spend no less than \$4,000,000 in Project
20 Dollars. SRP shall not include its own personnel costs in
21 overseeing the implementation of the Projects as Project Dollars.

22 80. SRP shall maintain, and present to EPA upon request,
23 all documents to substantiate the Project Dollars expended to
24 implement the Projects described in Appendix A, and shall provide
25 these documents to EPA within thirty (30) days of a request for
26 the documents.

27 81. All plans and reports prepared by SRP pursuant to the
28 requirements of this Section of the Consent Decree and required

1 to be submitted to EPA shall be publicly available from SRP
2 without charge.

3 82. SRP shall certify, as part of each plan submitted to
4 EPA for any Project, that SRP is not otherwise required by law to
5 perform the Project described in the plan, that SRP is unaware of
6 any other person who is required by law to perform the Project,
7 and that SRP will not use any Project, or portion thereof, to
8 satisfy any obligations that it may have under other applicable
9 requirements of law, including any applicable renewable or energy
10 efficiency portfolio standards.

11 83. SRP shall use good faith efforts to secure as much
12 benefit as possible for the Project Dollars expended, consistent
13 with the applicable requirements and limits of this Consent
14 Decree.

15 84. If SRP elects (where such an election is allowed) to
16 undertake a Project by contributing funds to another person or
17 entity that will carry out the Project in lieu of SRP, but not
18 including SRP's agents or contractors, that person or
19 instrumentality must, in writing: (a) identify its legal
20 authority for accepting such funding; and (b) identify its legal
21 authority to conduct the Project for which SRP contributes the
22 funds. Regardless of whether SRP elects (where such election is
23 allowed) to undertake a Project by itself or to do so by
24 contributing funds to another person or instrumentality that will
25 carry out the Project, SRP acknowledges that it will receive
26 credit for the expenditure of such funds as Project Dollars only
27 if SRP demonstrates that the funds have been actually spent by
28 either SRP or by the person or instrumentality receiving them,

1 and that such expenditures met all requirements of this Consent
2 Decree.

3 85. SRP shall comply with the reporting requirements
4 described in Appendix A.

5 86. Within sixty (60) calendar days following the
6 completion of each Project required under this Consent Decree
7 (including any applicable periods of demonstration or testing),
8 SRP shall submit to the United States a report that documents the
9 date that the Project was completed, SRP's results of
10 implementing the Project, including the emission reductions or
11 other environmental benefits achieved, and the Project Dollars
12 expended by SRP in implementing the Project.

13 **IX. CIVIL PENALTY**

14 87. Within thirty (30) calendar days after entry of this
15 Consent Decree, SRP shall pay to the United States a civil
16 penalty in the amount of \$950,000. The civil penalty shall be
17 paid by Electronic Funds Transfer ("EFT") to the United States
18 Department of Justice, in accordance with current EFT procedures,
19 referencing USAO File Number 2008V00564 and DOJ Case Number 90-5-
20 2-1-09174 and the civil action case name and case number of this
21 action. The costs of such EFT shall be SRP's responsibility.
22 Payment shall be made in accordance with instructions provided to
23 SRP by the Financial Litigation Unit of the U.S. Attorney's
24 Office for the District of Arizona. Any funds received after
25 2:00 p.m. EDT shall be credited on the next business day. At the
26 time of payment, SRP shall provide notice of payment, referencing
27 the USAO File Number, the DOJ Case Number, and the civil action
28 case name and case number, to the Department of Justice and to

1 EPA in accordance with Section XVIII (Notices) of this Consent
2 Decree.

3 88. Failure to timely pay the civil penalty shall subject
4 SRP to interest accruing from the date payment is due until the
5 date payment is made at the rate prescribed by 28 U.S.C. § 1961,
6 and shall render SRP liable for all charges, costs, fees, and
7 penalties established by law for the benefit of a creditor or of
8 the United States in securing payment.

9 89. Payments made pursuant to this Section are penalties
10 within the meaning of Section 162(f) of the Internal Revenue
11 Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures
12 for purposes of federal law.

13 X. RESOLUTION OF PAST CIVIL CLAIMS

14 90. Entry of this Consent Decree shall resolve all civil
15 claims of the United States arising under Part C of Subchapter I
16 of the Clean Air Act, 42 U.S.C. §§ 7470 to 7492, under the
17 modification provisions of the Clean Air Act's Standards of
18 Performance for New Stationary Sources program, 42 U.S.C. § 7411
19 and 40 C.F.R. § 60.14, and under Subchapter V of the Clean Air
20 Act, §§ 7661 to 7661f, that arose from modifications that
21 commenced at CGS prior to the date of lodging of this Consent
22 Decree.

23 XI. PERIODIC REPORTING

24 91. After entry of this Consent Decree, SRP shall submit to
25 the United States a periodic report, within sixty (60) days after
26 the end of each half of the calendar year (January through June
27 and July through December). The report shall include the
28 following information:

- a. all information necessary to determine compliance with the requirements of the following Paragraphs of this Consent Decree: Paragraphs 41 through 46 concerning NO_x emissions and monitoring; Paragraphs 47 through 58 concerning SO₂ emissions and monitoring, and the surrender of SO₂ Allowances; and Paragraphs 63 through 66 concerning PM emissions and monitoring;
- b. all data recorded by the PM CEMS as required by Paragraph 71, and all periods of monitor malfunction, maintenance, and/or repair as provided in Paragraph 67;
- c. all information relating to Super-Compliant SO₂ Allowances that SRP claims to have generated in accordance with Paragraph 59 through compliance beyond the requirements of this Consent Decree;
- c. all information relating to the NO_x Offset Requirement pursuant to Paragraphs 98 and 99; and
- e. all information indicating that the installation and commencement of operation for a pollution control device may be delayed, including the nature and cause of the delay, and any steps taken by SRP to mitigate such delay.

92. In any periodic progress report submitted pursuant to this Section, SRP may incorporate by reference information previously submitted under its Title V permitting requirements, provided that SRP attaches the Title V permit report (or the pertinent portions of such report) and provides a specific reference to the provisions of the Title V permit report that are responsive to the information required in the periodic progress

1 report.

2 93. In addition to the reports required by Paragraph 91, if
3 SRP violates or deviates from any provision of this Consent
4 Decree, SRP shall submit to the United States a report on the
5 violation or deviation within ten (10) business days after SRP
6 knew or should have known of the event. In the report, SRP shall
7 explain the cause or causes of the violation or deviation and any
8 measures taken or to be taken by SRP to cure the reported
9 violation or deviation or to prevent such violation or deviations
10 in the future. If at any time, the provisions of this Consent
11 Decree are included in Title V Permits, consistent with the
12 requirements for such inclusion in this Consent Decree, then the
13 deviation reports required under applicable Title V regulations
14 shall be deemed to satisfy all the requirements of this
15 Paragraph.

16 94. Each SRP report shall be signed by either SRP's Manager
17 of Environmental Services or the Plant Manager at CGS, and shall
18 contain the following certification:

19 This information was prepared either by me or under my
20 direction or supervision in accordance with a system
21 designed to assure that qualified personnel properly
22 gather and evaluate the information submitted. Based
23 on my evaluation, or the direction and my inquiry of
24 the person(s) who manage the system, or the person(s)
25 directly responsible for gathering the information, I
26 hereby certify under penalty of law that, to the best
27 of my knowledge and belief, this information is true,
28 accurate, and complete. I understand that there are
significant penalties for submitting false, inaccurate,
or incomplete information to the United States.

95. If any SO₂ Allowances are surrendered to any non-profit
third party pursuant to Section V, the non-profit third party's
certification shall be signed by a managing officer of the non-

1 profit third party and shall contain the following language:

2 I certify under penalty of law that _____ [name
3 of non-profit third party] will not sell, trade, or
4 otherwise exchange any of the allowances and will not
5 use any of the allowances to meet any obligation
6 imposed by any environmental law. I understand that
7 there are significant penalties for making
8 misrepresentations to or misleading the United States.

9 XII. REVIEW AND APPROVAL OF SUBMITTALS

10 96. SRP shall submit each plan, report, or other submission
11 required by this Consent Decree to EPA whenever such a document
12 is required to be submitted for review or approval pursuant to
13 this Consent Decree. EPA may approve the submittal or decline to
14 approve it and provide written comments explaining the bases for
15 declining such approval as soon as reasonably practicable.

16 Within sixty (60) days of receiving written comments from EPA,
17 SRP shall either: (a) revise the submittal consistent with the
18 written comments and provide the revised submittal to EPA; or (b)
19 submit the matter for dispute resolution, including the period of
20 informal negotiations, under Section XV (Dispute Resolution) of
21 this Consent Decree.

22 97. Upon receipt of EPA's final approval of the submittal,
23 or upon completion of the submittal pursuant to dispute
24 resolution, SRP shall implement the approved submittal in
25 accordance with the schedule specified therein or another EPA-
26 approved schedule.

27 XIII. STIPULATED PENALTIES

28 98. For any failure by SRP to comply with the terms of this
Consent Decree, and subject to the provisions of Sections XIV
(Force Majeure) and XV (Dispute Resolution), and except as

provided in Paragraph 99, SRP shall pay, within thirty (30) days after receipt of written demand to SRP by the United States, the following stipulated penalties to the United States:

Consent Decree Violation	Stipulated Penalty
a. Failure to pay the civil penalty as specified in Section IX (Civil Penalty) of this Consent Decree	\$10,000 per day
b. Failure to comply with any applicable 30-Day Rolling Average NO _x Emission Rate, 30-Day Rolling Average SO ₂ Emission Rate or 30-Day Rolling Average SO ₂ Removal Efficiency	<p>\$2,500 per day per violation where the violation is less than 5% in excess of the lb/mmBtu limits, or less than 0.25% below the removal efficiency requirement</p> <p>\$5,000 per day per violation where the violation is equal to or greater than 5% but less than 10% in excess of the lb/mmBtu limits, or equal to or greater than 0.25% but less than 0.50% below the removal efficiency requirement</p> <p>\$10,000 per day per violation where the violation is equal to or greater than 10% in excess of the lb/mmBtu limits, or greater than 0.50% below the removal efficiency requirement</p>

c. Failure to comply with the applicable 365-Day Plant-Wide Rolling NO _x Tonnage Limitation established by this Consent Decree	\$200,000 for the first 365-Day Plant-Wide Rolling NO _x Tonnage Limitation violation, plus \$5,000 for each subsequent 365-Day Plant-Wide Rolling NO _x Tonnage Limitation violation that includes any day in a previously-assessed 365-Day Plant-Wide Rolling NO _x Tonnage Limitation violation, plus offset NO _x emissions in an amount that is at least equal to the number of tons by which the 365-Day Plant-Wide Rolling NO _x Tonnage Limitation was exceeded, in accordance with the requirements of Paragraph 99, below
d. Failure to install, commence operation, or continue operation of a NO _x , SO ₂ , or PM control device on either Unit 1 or Unit 2, as required under this Consent Decree	\$10,000 per day per violation during the first 30 days, \$27,500 per day per violation thereafter
e. Failure to install or operate CEMS as required in this Consent Decree	\$1,000 per day per violation
f. Failure to apply for any permit required by Section XVI (Permits)	\$1,000 per day per violation
g. Failure to timely submit, modify, or implement, as approved, the reports, plans, studies, analyses, protocols, or other submittals required by this Consent Decree	\$750 per day per violation during the first ten days, \$1,000 per day per violation thereafter
h. Failure to surrender SO ₂ Allowances as required by Paragraphs 52 through 55, 57	(a) \$27,500 per day plus (b) \$1,000 per SO ₂ Allowance not surrendered

i. Failure to demonstrate the third-party surrender of an SO ₂ Allowance in accordance with Paragraph 56	\$2,500 per day per violation
j. Failure to undertake and complete any of the Environmental Projects in compliance with Section VIII (Environmental Projects) of this Consent Decree	\$1,000 per day per violation during the first 30 days, \$5,000 per day per violation thereafter
k. Any other violation of this Consent Decree	\$1,000 per day per violation

99. NO_x Offset Requirements.

a. No later than ninety (90) days following written demand by the United States for stipulated penalties pursuant to Paragraph 98.c, SRP shall submit a plan pursuant to Section XII (Review and Approval of Submittals), to obtain actual emission reductions of NO_x from sources other than CGS in Arizona, Colorado, New Mexico, and Utah to offset excess NO_x emissions as required by Paragraph 98.c.

b. Such plan shall describe the manner in which SRP will obtain the required NO_x emission reductions, and shall ensure that the total tons of NO_x emissions that exceeded the 365-Day Plant-Wide Rolling NO_x Tonnage Limitation are offset, no later than three (3) years from the date the plan is approved pursuant to Section XII (Review and Approval of Submittals), by an amount of equal or greater actual NO_x emission reductions from the proposed source(s).

c. SRP shall implement the project(s) in the approved plan in a manner which ensures that the offsetting NO_x emissions are obtained no later than three (3) years from the date the plan is approved pursuant to Section XII (Review and Approval of Submittals). In the next report submitted to EPA pursuant to

1 Section XI (Periodic Reporting) following three (3) years from the
2 date the plan is approved, SRP shall provide documentation to
3 demonstrate that it fully and timely obtained the offsetting NO_x
4 emission reductions in accordance with the approved plan.

5 d. NO_x emission reductions required by the Clean Air Act,
6 its implementing regulations, or a state implementation plan
7 shall not be approved as emission reductions to offset NO_x
8 emissions pursuant to Paragraph 98.c. EPA will apply Clean Air
9 Act § 173(c), 40 C.F.R. § 51.165, and Appendix S to Part 51 for
10 purposes of determining whether to approve the proposed plan.

11 100. Violations of any limit based on a 30-Day Rolling
12 Average constitutes thirty (30) days of violation but where such
13 a violation (for the same pollutant and from the same Unit)
14 recurs within periods less than thirty (30) days, SRP shall not
15 be obligated to pay a daily stipulated penalty for any day of the
16 recurrence for which a stipulated penalty has already been paid.

17 101. All stipulated penalties shall begin to accrue on the
18 day after the performance is due or on the day a violation
19 occurs, whichever is applicable, and shall continue to accrue
20 until performance is satisfactorily completed or until the
21 violation ceases, whichever is applicable. Nothing in this
22 Consent Decree shall prevent the simultaneous accrual of separate
23 stipulated penalties for separate violations of this Consent
24 Decree.

25 102. SRP shall pay all stipulated penalties to the United
26 States within thirty (30) days of receipt of written demand to
27 SRP from the United States, and shall continue to make such
28 payments every thirty (30) days thereafter until the violation(s)

1 no longer continues, unless SRP elects within 20 days of receipt
2 of written demand to SRP from the United States to dispute the
3 accrual of stipulated penalties in accordance with the provisions
4 in Section XV (Dispute Resolution) of this Consent Decree.

5 103. Stipulated penalties shall continue to accrue as
6 provided in accordance with Paragraph 101 during any dispute,
7 with interest on accrued stipulated penalties payable and
8 calculated at the rate established by the Secretary of the
9 Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid
10 until the following:

- 11 a. If the dispute is resolved by agreement, or by a
12 decision of the United States pursuant to Section XV
13 (Dispute Resolution) of this Consent Decree that is not
14 appealed to the Court, accrued stipulated penalties
15 agreed or determined to be owing, together with accrued
16 interest, shall be paid within thirty (30) days of the
17 effective date of the agreement or of the receipt of
18 the United States' decision;
- 19 b. If the dispute is appealed to the Court and the United
20 States prevails in whole or in part, SRP shall, within
21 thirty (30) days of receipt of the Court's decision or
22 order, pay all accrued stipulated penalties determined
23 by the Court to be owing, together with interest
24 accrued on such penalties determined by the Court to be
25 owing, except as provided in Subparagraph c, below;
- 26 c. If the Court's decision is appealed by either Party,
27 SRP shall, within fifteen (15) days of receipt of the
28 final appellate court decision, pay all accrued

1 stipulated penalties determined to be owing, together
2 with interest accrued on such stipulated penalties
3 determined to be owing by the appellate court.

4 Notwithstanding any other provision of this Consent Decree, the
5 accrued stipulated penalties agreed by the United States and SRP,
6 or determined by the United States through Dispute Resolution, to
7 be owing may be less than the stipulated penalty amounts set
8 forth in Paragraph 98.

9 104. All stipulated penalties shall be paid in the manner
10 set forth in Section IX (Civil Penalty) of this Consent Decree.

11 105. Should SRP fail to pay stipulated penalties in
12 compliance with the terms of this Consent Decree, the United
13 States shall be entitled to collect interest on such penalties,
14 as provided for in 28 U.S.C. § 1961.

15 106. The stipulated penalties provided for in this Consent
16 Decree shall be in addition to any other rights, remedies, or
17 sanctions available to the United States by reason of SRP's
18 failure to comply with any requirement of this Consent Decree or
19 applicable law, except that for any violation of the Act for
20 which this Consent Decree provides for payment of a stipulated
21 penalty, SRP shall be allowed a credit for stipulated penalties
22 paid against any statutory penalties also imposed for such
23 violation.

24 107. If either of the Units exceed an applicable emission
25 limitation set forth in this Consent Decree due to malfunction,
26 SRP has an Affirmative Defense to stipulated penalties under this
27 Consent Decree, if SRP has complied with the reporting
28 requirements of Paragraphs 111 and 112 and has demonstrated all

1 of the following:

- 2 a. The excess emissions resulted from a sudden and
3 unavoidable breakdown of process equipment or air
4 pollution control equipment beyond the reasonable
5 control of SRP;
- 6 b. The air pollution control equipment, process equipment,
7 or processes were at all times maintained and operated
8 in a manner consistent with good practice for
9 minimizing emissions;
- 10 c. If repairs were required, the repairs were made in an
11 expeditious fashion when the applicable emission
12 limitations were being exceeded. Off-shift labor and
13 overtime were utilized where practicable to ensure that
14 the repairs were made as expeditiously as possible. If
15 off-shift labor and overtime were not utilized, SRP
16 satisfactorily demonstrated that the measures were
17 impracticable;
- 18 d. The amount and duration of the excess
19 emissions(including any bypass operation) were
20 minimized to the maximum extent practicable during
21 periods of such emissions;
- 22 e. All reasonable steps were taken to minimize the impact
23 of the excess emissions on ambient air quality;
- 24 f. The excess emissions were not part of a recurring
25 pattern indicative of inadequate design, operation, or
26 maintenance;
- 27 g. During the period of excess emissions there were no
28 exceedances of the relevant National Ambient Air

1 Quality Standards that could be attributed to the
2 emission exceedances at CGS;

- 3 h. The excess emissions did not stem from any activity or
4 event that could have been foreseen and avoided, or
5 planned, and could not have been avoided by better
6 operations and maintenance practices;
- 7 i. All emissions monitoring systems were kept in operation
8 if at all practicable; and
- 9 j. SRP's actions in response to the excess emissions were
10 documented by contemporaneous records.

11 108. If either of the Units exceed an applicable emission
12 limitation set forth in this Consent Decree due to startup or
13 shutdown, SRP has an Affirmative Defense to stipulated penalties
14 under this Consent Decree, if SRP has complied with the reporting
15 requirements of Paragraph 111 and 112 and has demonstrated all of
16 the following:

- 17 a. The excess emissions could not have been prevented
18 through careful and prudent planning and design;
- 19 b. If the excess emissions were the result of a bypass of
20 control equipment, the bypass was unavoidable to
21 prevent loss of life, personal injury, or severe damage
22 to air pollution control equipment, production
23 equipment, or other property;
- 24 c. The air pollution control equipment, process equipment,
25 or processes were at all times maintained and operated
26 in a manner consistent with good practice for
27 minimizing emissions;
- 28 d. The amount and duration of the excess emissions

(including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;

f. During the period of excess emissions there were no exceedances of the relevant National Ambient Air Quality Standards that could be attributed to the emission exceedances at CGS;

g. All emissions monitoring systems were kept in operation if at all practicable; and

h. SRP's actions in response to the excess emissions were documented by contemporaneous records.

109. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to Paragraph 107.

110. If excess emissions occur due to a malfunction during scheduled maintenance, then those instances shall be treated as other malfunctions subject to Paragraph 107.

111. For an Affirmative Defense under Paragraphs 107 or 108, SRP shall demonstrate, through submission of the data and information under the reporting provisions of this section, that all reasonable and practicable measures within SRP's control were implemented to prevent the occurrence of the excess emissions.

112. SRP shall provide notice to the United States in writing of SRP's intent to assert an Affirmative Defense for malfunction, startup, or shutdown under Paragraphs 107 or 108 as soon as practicable, but in no event later than twenty-one (21)

1 calendar days following the date of the malfunction, startup or
2 shutdown. This notice shall be submitted to EPA pursuant to the
3 provisions of Section XVIII (Notices). The notice shall contain:

- 4 a. The identity of each stack or other emission point
5 where the excess emissions occurred;
- 6 b. The magnitude of the excess emissions expressed in the
7 units of the applicable emission limitation and the
8 operating data and calculations used in determining the
9 magnitude of the excess emissions;
- 10 c. The time and duration or expected duration of the
11 excess emissions;
- 12 d. The identity of the equipment from which the excess
13 emissions emanated;
- 14 e. The nature and cause of the emissions;
- 15 f. The steps taken, if the excess emissions were the
16 result of a malfunction, to remedy the malfunction and
17 the steps taken or planned to prevent the recurrence of
18 the malfunctions;
- 19 g. The steps that were or are being taken to limit the
20 excess emissions; and
- 21 h. If the source's permit contains procedures governing
22 source operation during periods of startup or
23 malfunction and the excess emissions resulted from
24 startup or malfunction, a list of the steps taken to
25 comply with the permit procedures.

26 113. A malfunction, startup, or shutdown shall not
27 constitute a Force Majeure Event unless the malfunction, startup,
28 or shutdown also meets the definition of a Force Majeure Event,

1 as provided in Section XIV (Force Majeure).

2 **XIV. FORCE MAJEURE**

3 114. For purposes of this Consent Decree, a "Force Majeure
4 Event" shall mean an event that has been or will be caused by
5 circumstances beyond the control of SRP, its contractors, or any
6 entity controlled by SRP that delays compliance with any
7 provision of this Consent Decree or otherwise causes a violation
8 of any provision of this Consent Decree despite SRP's best
9 efforts to fulfill the obligation. "Best efforts to fulfill the
10 obligation" include using the best efforts to anticipate any
11 potential Force Majeure Event and to address the effects of any
12 such event (a) as it is occurring and (b) after it has occurred,
13 such that the delay or violation is minimized to the greatest
14 extent possible.

15 115. Notice of Force Majeure Events. If any event occurs or
16 has occurred that may delay compliance with or otherwise cause a
17 violation of any obligation under this Consent Decree, as to
18 which SRP intends to assert a claim of Force Majeure, SRP shall
19 notify the United States in writing as soon as practicable, but
20 in no event later than twenty-one (21) calendar days following
21 the date SRP first knew, or by the exercise of due diligence
22 should have known, that the event caused or may cause such delay
23 or violation. In this notice, SRP shall reference this Paragraph
24 of this Consent Decree and describe the anticipated length of
25 time that the delay or violation may persist, the cause or causes
26 of the delay or violation, all measures taken or to be taken by
27 SRP to prevent or minimize the delay or violation, the schedule
28 by which SRP proposes to implement those measures, and SRP's

1 rationale for attributing a delay or violation to a Force Majeure
2 Event. SRP shall adopt all reasonable measures to avoid or
3 minimize such delays or violations. SRP shall be deemed to know
4 of any circumstance which SRP, its contractors, or any entity
5 controlled by SRP knew or should have known.

6 116. Failure to Give Notice. If SRP fails to comply with
7 the notice requirements of this Section, the United States may
8 void SRP's claim for Force Majeure as to the specific event for
9 which SRP has failed to comply with such notice requirement.

10 117. United States's Response. The United States shall
11 notify SRP in writing regarding SRP's claim of Force Majeure
12 within twenty (20) business days of receipt of the notice
13 provided under Paragraph 115. If the United States agrees that a
14 delay in performance has been or will be caused by a Force
15 Majeure Event, the United States and SRP shall stipulate to an
16 extension of deadline(s) for performance of the affected
17 compliance requirement(s) by a period equal to the delay actually
18 caused by the event. In such circumstances, an appropriate
19 modification shall be made pursuant to Section XXII
20 (Modification) of this Consent Decree.

21 118. Disagreement. If the United States does not accept
22 SRP's claim of Force Majeure, or if the United States and SRP
23 cannot agree on the length of the delay actually caused by the
24 Force Majeure Event, the matter shall be resolved in accordance
25 with Section XV (Dispute Resolution) of this Consent Decree.

26 119. Burden of Proof. In any dispute regarding Force
27 Majeure, SRP shall bear the burden of proving that any delay in
28 performance or any other violation of any requirement of this

1 Consent Decree was caused by or will be caused by a Force Majeure
2 Event. SRP shall also bear the burden of proving that SRP gave
3 the notice required by this Section and the burden of proving the
4 anticipated duration and extent of any delay(s) attributable to a
5 Force Majeure Event. An extension of one compliance date based
6 on a particular event may, but will not necessarily, result in an
7 extension of a subsequent compliance date.

8 120. Events Excluded. Unanticipated or increased costs or
9 expenses associated with the performance of SRP's obligations
10 under this Consent Decree shall not constitute a Force Majeure
11 Event.

12 121. Potential Force Majeure Events. The Parties agree
13 that, depending upon the circumstances related to an event and
14 SRP's response to such circumstances, the kinds of events listed
15 below are among those that could qualify as Force Majeure Events
16 within the meaning of this Section: construction, labor, or
17 equipment delays; Malfunction of a Unit or emission control
18 device; unanticipated coal supply or pollution control reagent
19 delivery interruptions; acts of God; acts of war or terrorism;
20 and orders by a government official, government agency, other
21 regulatory authority, or a regional transmission organization,
22 acting under and authorized by applicable law, that directs SRP
23 to supply electricity in response to a system-wide (state-wide or
24 regional) emergency. Depending upon the circumstances and SRP's
25 response to such circumstances, failure of a permitting authority
26 to issue a necessary permit in a timely fashion may constitute a
27 Force Majeure Event where the failure of the permitting authority
28 to act is beyond the control of SRP and SRP has taken all steps

1 available to it to obtain the necessary permit, including, but
2 not limited to: submitting a complete permit application;
3 responding to requests for additional information by the
4 permitting authority in a timely fashion; and accepting lawful
5 permit terms and conditions after expeditiously exhausting any
6 legal rights to appeal terms and conditions imposed by the
7 permitting authority.

8 122. As part of the resolution of any matter submitted to
9 this Court under Section XV (Dispute Resolution) regarding a
10 claim of Force Majeure, the United States and SRP by agreement,
11 or this Court by order, may in appropriate circumstances extend
12 or modify the schedule for completion of work under this Consent
13 Decree to account for the delay in the work that occurred as a
14 result of any delay agreed to by the United States or approved by
15 the Court. SRP shall be liable for stipulated penalties for its
16 failure thereafter to complete the work in accordance with the
17 extended or modified schedule (provided that SRP shall not be
18 precluded from making a further claim of Force Majeure with
19 regard to meeting any such extended or modified schedule).

20 **XV. DISPUTE RESOLUTION**

21 123. The dispute resolution procedure provided by this
22 Section shall be available to resolve all disputes arising under
23 this Consent Decree, provided that the Party invoking such
24 procedure has first made a good faith attempt to resolve the
25 matter with the other Party.

26 124. The dispute resolution procedure required herein shall
27 be invoked by one Party giving written notice to the other Party
28 advising of a dispute pursuant to this Section. The notice shall

1 describe the nature of the dispute and shall state the noticing
2 Party's position with regard to such dispute. The Party
3 receiving such a notice shall acknowledge receipt of the notice,
4 and the Parties in dispute shall expeditiously schedule a meeting
5 to discuss the dispute informally not later than fourteen (14)
6 days following receipt of such notice.

7 125. Disputes submitted to dispute resolution under this
8 Section shall, in the first instance, be the subject of informal
9 negotiations among the Parties. Such period of informal
10 negotiations shall not extend beyond thirty (30) calendar days
11 from the date of the first meeting among the Parties'
12 representatives unless they agree in writing to shorten or extend
13 this period.

14 126. If the Parties are unable to reach agreement during the
15 informal negotiation period, the United States shall provide SRP
16 with a written summary of its position regarding the dispute.
17 The written position provided by the United States shall be
18 considered binding unless, within forty-five (45) calendar days
19 thereafter, SRP seeks judicial resolution of the dispute by
20 filing a petition with this Court. If SRP seeks judicial
21 resolution, the United States' written summary shall be deemed
22 its initial filing with this Court regarding the dispute. The
23 United States may submit a response to the petition within forty-
24 five (45) calendar days of filing.

25 127. The time periods set out in this Section may be
26 shortened or lengthened upon motion to the Court of one of the
27 Parties to the dispute, explaining the Party's basis for seeking
28 such a scheduling modification.

1 128. This Court shall not draw any inferences nor establish
2 any presumptions adverse to either Party as a result of
3 invocation of this Section or the Parties' inability to reach
4 agreement.

5 129. As part of the resolution of any dispute under this
6 Section, in appropriate circumstances the Parties may agree, or
7 this Court may order, an extension or modification of the
8 schedule for the completion of the activities required under this
9 Consent Decree to account for the delay that occurred as a result
10 of dispute resolution. SRP shall be liable for stipulated
11 penalties for its failure thereafter to complete the work in
12 accordance with the extended or modified schedule, provided that
13 SRP not be precluded from asserting that a Force Majeure Event
14 has caused or may cause a delay in complying with the extended or
15 modified schedule.

16 130. The Court shall decide all disputes pursuant to
17 applicable principles of law for resolving such disputes. In
18 their filings with the Court under Paragraph 126, the Parties
19 shall state their respective positions as to the applicable
20 standard of law for resolving the particular dispute.

21 **XVI. PERMITS**

22 131. Unless expressly stated otherwise in this Consent
23 Decree, in any instance where otherwise applicable law or this
24 Consent Decree requires SRP to secure a permit to authorize
25 construction or operation of any device, including all
26 preconstruction, construction, and operating permits required
27 under State law, SRP shall make such application in a timely
28 manner. The United States will use its best efforts to

1 expeditiously fulfill its role in reviewing all permit
2 applications submitted by SRP in order to meet the requirements
3 of this Consent Decree.

4 132. When permits are required, SRP shall complete and
5 submit applications for such permits to Arizona DEQ to allow
6 sufficient time for all legally required processing and review of
7 the permit request, including requests for additional information
8 by Arizona DEQ. Any failure by SRP to submit a timely permit
9 application for Unit 1 and/or Unit 2 shall bar any use by SRP of
10 Section XIV (Force Majeure) of this Consent Decree, where a Force
11 Majeure claim is based on permitting delays.

12 133. Notwithstanding the reference to SRP's Title V permit
13 for CGS in this Consent Decree, the enforcement of that permit
14 shall be in accordance with its own terms and the Act. SRP's
15 Title V permit for CGS shall not be enforceable under this
16 Consent Decree, although any term or limit established by or
17 under this Consent Decree shall be enforceable under this Consent
18 Decree regardless of whether such term has or will become part of
19 a Title V permit, subject to the terms of Section XXVI
20 (Conditional Termination of Enforcement Under Decree) of this
21 Consent Decree.

22 134. Within one hundred eighty (180) days after entry of
23 this Consent Decree, SRP shall amend any applicable Title V
24 permit application, or apply for amendments of its Title V
25 permit, to include a schedule for all unit-specific and plant-
26 specific performance, operational, maintenance, and control
27 technology requirements established by this Consent Decree
28 including, but not limited to, Emission Rates, Removal

1 Efficiencies, the 365-day Plant-Wide Rolling NO_x Tonnage
2 Limitation, and the requirements pertaining to the surrender of
3 SO₂ Allowances.

4 135. Within one (1) year from the commencement of operation
5 of the final pollution control device to be installed on a Unit
6 under this Consent Decree, SRP shall either apply to permanently
7 include the requirements and limitations enumerated in this
8 Consent Decree into a federally enforceable permit or request a
9 site-specific amendment to the Arizona SIP to include the
10 requirements and limitations enumerated in this Consent Decree.
11 The permit or Arizona SIP amendment shall require compliance with
12 the following: (a) any applicable Emission Rate or Removal
13 Efficiency, (b) the 365-day Plant-Wide Rolling NO_x Tonnage
14 Limitation, and (c) the SO₂ Allowance surrender requirements set
15 forth in this Consent Decree. For purposes of this Consent
16 Decree, the federally enforceable permit must be issued by
17 Arizona DEQ under its authority to issue permits pursuant to the
18 Arizona SIP and not solely under Arizona's authority to issue
19 permits pursuant to its Title V permit program.

20 136. SRP shall provide the United States with a copy of
21 each application for a federally enforceable permit or Arizona
22 SIP amendment, as well as a copy of any permit proposed as a
23 result of such application, to allow for timely participation in
24 any public comment opportunity.

25 137. If SRP sells or transfers to an entity unrelated to
26 SRP ("Third Party Purchaser") part or all of its Ownership
27 Interest covered under this Consent Decree, SRP shall comply with
28 the requirements of Paragraphs 145 through 148 of this Consent

1 Decree with regard to that Ownership Interest prior to any such
2 sale or transfer unless, following any such sale or transfer, SRP
3 remains the holder of the permit for such facility.

4 **XVII. INFORMATION COLLECTION AND RETENTION**

5 138. Any authorized representative of the United States,
6 including its attorneys, contractors, and consultants, upon
7 presentation of credentials, shall have a right of entry upon the
8 premises of CGS Unit 1 and Unit 2 at any reasonable time for the
9 purpose of:

- 10 a. monitoring the progress of activities required under
11 this Consent Decree;
- 12 b. verifying any data or information submitted to the
13 United States in accordance with the terms of this
14 Consent Decree;
- 15 c. obtaining samples and, upon request, splits of any
16 samples taken by SRP or its representatives,
17 contractors, or consultants; and
- 18 d. assessing SRP's compliance with this Consent Decree.

19 139. SRP shall retain, and instruct its contractors and
20 agents to preserve, all non-identical copies of all records and
21 documents (including records and documents in electronic form)
22 now in its or its contractors' or agents' possession or control,
23 and that directly relate to SRP's performance of its obligations
24 under this Consent Decree for the following periods: (a) until
25 December 31, 2020 for records concerning physical or operational
26 changes undertaken in accordance with Section IV (NO_x Emission
27 Reductions and Controls) and Section V (SO₂ Emissions Reductions
28 and Controls); and (b) until December 31, 2017 for all other

1 records. This record retention requirement shall apply
2 regardless of any corporate document retention policy to the
3 contrary.

4 140. All information and documents submitted by SRP
5 pursuant to this Consent Decree shall be subject to any requests
6 under applicable law providing public disclosure of documents
7 unless (a) the information and documents are subject to legal
8 privileges or protection or (b) SRP claims and substantiates in
9 accordance with 40 C.F.R. Part 2 that the information and
10 documents contain confidential business information.

11 141. Nothing in this Consent Decree shall limit the
12 authority of the EPA to conduct tests and inspections at SRP's
13 facilities under Section 114 of the Act, 42 U.S.C. § 7414, or any
14 other applicable federal laws, regulations or permits.

15 **XVIII. NOTICES**

16 142. Unless otherwise provided herein, whenever
17 notifications, submissions, or communications are required by
18 this Consent Decree, they shall be made in writing and addressed
19 as follows:

20 As to the United States of America:

21 Chief, Environmental Enforcement Section
22 Environment and Natural Resources Division
23 U.S. Department of Justice
24 P.O. Box 7611, Ben Franklin Station
25 Washington, DC 20044-7611
26 DJ# 90-5-2-1-06837

27 and

28 Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building [2242A]
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

1 and
2 Director, Air Division
3 U.S. EPA Region 9
4 75 Hawthorne Street [Air-1]
5 San Francisco, CA 94105

6 As to SRP:

7 Kevin Wanttaja, Manager, Environmental Services
8 Salt River Project
9 Environmental, PAB352
10 1521 N. Project Dr.
11 Tempe, AZ 85281

12 and

13 Jane Alfano, Corporate Counsel
14 Salt River Project
15 Legal Services Department, PAB207
16 1521 N. Project Dr.
17 Tempe, AZ 85281

18 143. All notifications, communications or submissions made
19 pursuant to this Section shall be sent either by: (a) overnight
20 mail or overnight delivery service with signature required for
21 delivery, or (b) certified or registered mail, return receipt
22 requested. All notifications, communications and transmissions
23 (a) sent by overnight, certified or registered mail shall be
24 deemed submitted on the date they are postmarked, or (b) sent by
25 overnight delivery service shall be deemed submitted on the date
26 they are delivered to the delivery service.

27 144. Either Party may change either the notice recipient or
28 the address for providing notices to it by serving the other
Party with a notice setting forth such new notice recipient or
address.

29 XIX. SALES OR TRANSFERS OF OWNERSHIP INTERESTS

30 145. If SRP proposes to sell or transfer an Ownership
31 Interest to another entity (a "Third Party Purchaser"), SRP shall

1 advise the Third Party Purchaser in writing of the existence of
2 this Consent Decree prior to such sale or transfer, and shall
3 send a copy of such written notification to the United States
4 pursuant to Section XVIII (Notices) of this Consent Decree at
5 least sixty (60) days before such proposed sale or transfer.

6 146. No sale or transfer of an Ownership Interest shall
7 take place before the Third Party Purchaser and EPA have
8 executed, and the Court has approved, a modification pursuant to
9 Section XXII (Modification) of this Consent Decree making the
10 Third Party Purchaser a Party to this Consent Decree and jointly
11 and severally liable with SRP for all the requirements of this
12 Consent Decree that may be applicable to the transferred or
13 purchased Ownership Interests.

14 147. This Consent Decree shall not be construed to impede
15 the transfer of any Ownership Interests between SRP and any Third
16 Party Purchaser so long as the requirements of this Consent
17 Decree are met. This Consent Decree shall not be construed to
18 prohibit a contractual allocation - as between SRP and any Third
19 Party Purchaser of Ownership Interests - of the burdens of
20 compliance with this Consent Decree, provided that both SRP and
21 such Third Party Purchaser shall remain jointly and severally
22 liable to the United States for the obligations of this Consent
23 Decree applicable to the transferred or purchased Ownership
24 Interests.

25 148. If the United States agrees, the United States, SRP,
26 and the Third Party Purchaser that has become a party to this
27 Consent Decree pursuant to Paragraph 146, may execute a
28 modification that relieves SRP of its liability under this

1 Consent Decree for, and makes the Third Party Purchaser liable
2 for, all obligations and liabilities applicable to the purchased
3 or transferred Ownership Interests. Notwithstanding the
4 foregoing, however, SRP may not assign, and may not be released
5 from, any obligation under this Consent Decree that is not
6 specific to the purchased or transferred Ownership Interests,
7 including the obligations set forth in Sections VIII
8 (Environmental Projects) and IX (Civil Penalty). SRP may propose
9 and the United States may agree to restrict the scope of the
10 joint and several liability of any purchaser or transferee for
11 any obligations of this Consent Decree that are not specific to
12 the transferred or purchased Ownership Interests, to the extent
13 such obligations may be adequately separated in an enforceable
14 manner.

15 **XX. EFFECTIVE DATE**

16 149. The effective date of this Consent Decree shall be the
17 date upon which this Consent Decree is entered by the Court.

18 **XXI. RETENTION OF JURISDICTION**

19 150. The Court shall retain jurisdiction of this case after
20 entry of this Consent Decree to enforce compliance with the terms
21 and conditions of this Consent Decree and to take any action
22 necessary or appropriate for its interpretation, construction,
23 execution, modification, or adjudication of disputes. During the
24 term of this Consent Decree, either Party to this Consent Decree
25 may apply to the Court for any relief necessary to construe or
26 effectuate this Consent Decree.

27 **XXII. MODIFICATION**

28 151. The terms of this Consent Decree may be modified only

1 by a subsequent written agreement signed by the United States and
2 SRP. Where the modification constitutes a material change to any
3 term of this Consent Decree, it shall be effective only upon
4 approval by the Court.

5 **XXIII. GENERAL PROVISIONS**

6 152. This Consent Decree is not a permit. Compliance with
7 the terms of this Consent Decree does not guarantee compliance
8 with all applicable federal, state, or local laws or regulations.
9 The emission rates and removal efficiencies set forth herein do
10 not relieve SRP from any obligation to comply with other state
11 and federal requirements under the Clean Air Act, including SRP's
12 obligation to satisfy any State modeling requirements set forth
13 in the Arizona SIP.

14 153. This Consent Decree does not apply to any claim(s) of
15 alleged criminal liability.

16 154. In any subsequent administrative or judicial action
17 initiated by the United States for injunctive relief or civil
18 penalties relating to CGS as covered by this Consent Decree, SRP
19 shall not assert any defense or claim based upon principles of
20 waiver, res judicata, collateral estoppel, issue preclusion,
21 claim preclusion, or claim splitting, or any other defense based
22 upon the contention that the claims raised by the United States
23 in the subsequent proceeding were brought, or should have been
24 brought, in the instant case; provided, however, that nothing in
25 this Paragraph is intended to affect the validity of Section X
26 (Resolution of Past Civil Claims).

27 155. Except as specifically provided by this Consent
28 Decree, nothing in this Consent Decree shall relieve SRP of its

1 obligation to comply with all applicable federal, state, and
2 local laws and regulations. Subject to the provisions in Section
3 X (Resolution of Past Civil Claims), nothing contained in this
4 Consent Decree shall be construed to prevent or limit the rights
5 of the United States to obtain penalties or injunctive relief
6 under the Act or other federal, state, or local statutes,
7 regulations, or permits.

8 156. Each limit and/or other requirement established by or
9 under this Consent Decree is a separate, independent requirement.

10 157. Performance standards, emissions limits, and other
11 quantitative standards set by or under this Consent Decree must
12 be met to the number of significant digits in which the standard
13 or limit is expressed. For example, an Emission Rate of 0.100 is
14 not met if the actual Emission Rate is 0.101. SRP shall round the
15 fourth significant digit to the nearest third significant digit,
16 or the third significant digit to the nearest second significant
17 digit, depending upon whether the limit is expressed to three or
18 two significant digits. For example, if an actual Emission Rate
19 is 0.1004, that shall be reported as 0.100, and shall be in
20 compliance with an Emission Rate of 0.100, and if an actual
21 Emission Rate is 0.1005, that shall be reported as 0.101, and
22 shall not be in compliance with an Emission Rate of 0.100.
23 Removal Efficiency for SO₂ is expressed to 3 significant figures
24 - 95.0%. The 95.0% Removal Efficiency requirement is met if, for
25 example, the calculated Removal Efficiency is 94.95%. However,
26 95.0% Removal Efficiency requirement is not met if, for example,
27 the calculated Removal Efficiency is 94.94%. SRP shall report
28 data to the number of significant digits in which the standard or

1 limit is expressed.

2 158. This Consent Decree does not limit, enlarge or affect
3 the rights of either Party to this Consent Decree as against any
4 third parties.

5 159. This Consent Decree constitutes the final, complete
6 and exclusive agreement and understanding between the Parties
7 with respect to the settlement embodied in this Consent
8 Decree, and supercedes all prior agreements and understandings
9 between the Parties related to the subject matter herein. No
10 document, representation, inducement, agreement, understanding,
11 or promise constitutes any part of this Consent Decree or the
12 settlement it represents, nor shall they be used in construing
13 the terms of this Consent Decree.

14 160. Each Party to this action shall bear its own costs and
15 attorneys' fees.

16 **XXIV. SIGNATORIES AND SERVICE**

17 161. Each undersigned representative of the Parties
18 certifies that he or she is fully authorized to enter into the
19 terms and conditions of this Consent Decree and to execute and
20 legally bind to this document the Party he or she represents.

21 162. This Consent Decree may be signed in counterparts, and
22 such counterpart signature pages shall be given full force and
23 effect.

24 163. Each Party hereby agrees to accept service of process
25 by mail with respect to all matters arising under or relating to
26 this Consent Decree and to waive the formal service requirements
27 set forth in Rule 4 of the Federal Rules of Civil Procedure and
28 any applicable Local Rules of this Court including, but not

1 limited to, service of a summons.

2 **XXV. PUBLIC COMMENT**

3 164. Both Parties agree and acknowledge that final approval
4 by the United States and entry of this Consent Decree is subject
5 to the procedures of 28 C.F.R. § 50.7, which provides for notice
6 of the lodging of this Consent Decree in the Federal Register, an
7 opportunity for public comment, and the right of the United
8 States to withdraw or withhold consent if the comments disclose
9 facts or considerations which indicate that this Consent Decree
10 is inappropriate, improper or inadequate. SRP shall not oppose
11 entry of this Consent Decree by this Court or challenge any
12 provision of this Consent Decree unless the United States has
13 notified SRP, in writing, that the United States no longer
14 supports entry of this Consent Decree.

15 **XXVI. CONDITIONAL TERMINATION OF ENFORCEMENT UNDER CONSENT DECREE**

16 165. Termination as to completed tasks. As soon as SRP
17 completes a construction project or any other requirement of this
18 Consent Decree that is not ongoing or recurring, SRP may, by
19 motion to this Court, seek termination of the provision or
20 provisions of this Consent Decree that imposed the requirement.

21 166. Conditional termination of enforcement through this
22 Consent Decree. Subject to the provisions of Paragraph 167,
23 after SRP:

- 24 a. has successfully completed construction, and has
25 maintained operation, of all pollution controls as
26 required by this Consent Decree for a period of two
27 years; and
28 b. has obtained all the final permits required by Section

1 XVI (Permits) of this Consent Decree covering both Unit
2 1 and Unit 2 that include as federally enforceable
3 permit terms, all of the Unit performance and other
4 requirements specified in this Consent Decree;

5 then SRP may so certify these facts to the United States and this
6 Court. If the United States does not object in writing with
7 specific reasons within forty-five (45) days of receipt of SRP's
8 certification, then, for any violations of this Consent Decree
9 that occur after the filing of notice, the United States shall
10 pursue enforcement of the requirements contained in the Title V
11 permit through the applicable Title V permit and/or other
12 enforcement authorities and not through this Consent Decree.

13 167. Resort to enforcement under this Consent Decree.

14 Notwithstanding Paragraph 166, if enforcement of a provision in
15 this Consent Decree cannot be pursued by United States under the
16 applicable Title V permit, or if a requirement of this Consent
17 Decree was intended to be part of a Title V Permit and did not
18 become or remain part of such permit, then such requirement may
19 be enforced under the terms of this Consent Decree at any time.

20 XXVII. FINAL JUDGMENT

21 168. Upon approval and entry of this Consent Decree by the
22 Court, this Consent Decree shall constitute a final judgment
23 between the United States and SRP.

1 Signature Page for United States of America v. Salt River Project
2 Agricultural Improvement and Power District Consent Decree
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6 FOR THE UNITED STATES DEPARTMENT OF JUSTICE
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9 Respectfully submitted,
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1 Signature Page for United States of America v. Salt River Project
2 Agricultural Improvement and Power District Consent Decree

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5 FOR THE UNITED STATES DEPARTMENT OF JUSTICE

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